IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12185 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAPI NAGARPALIKA - Petitioner(s)

Versus

RAMANLAL VESTABHAI PATEL - Respondent(s)

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Appearance :

MR JB PARDIWALA for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 21/07/2005

ORAL JUDGMENT

Leave to amend the date of order passed in Misc. Application No. 18 of 2004 in prayer clause 7.B. Rule. Shri Mukesh H. Rathod, learned advocate waives service of Rule.

2. In this petition under Article 226 / 227 of the Constitution of India, the petitioner Nagarpalika has challenged the legality and valiidity of the order passed by the Labour Court, Valsad dated 25.2.2005 in Misc. Application No. 18/2004 in Reference (LCV) No. 5 of 2000.

3. The respondent workman raised industrial dispute challenging his alleged termination which was referred to the Labour Court, Valsad for its adjudication being Reference (LCV) No. 5/2000. It appears from the record that as nobody remained present on behalf of the petitioner the Labour Court, Valsad by its judgment and award dated 3.12.2003 allowed the said Reference. It appears from the record that being aggrieved and dissatisfied with the ex-parte award the petitioner had preferred Special Civil Application No. 5005 of 2004 which came to be withdrawn with a liberty to approach the Labour Court for setting aside the award, and this Court by order dated 27.4.2004 granted permission to the petitioner to withdraw the said Special Civil Application. Thereafter the petitioner had preferred an application under Section 26(A) of the Industrial Disputes (Gujarat) Rules for getting the ex-parte award set aside being Misc. Application No. 18/2004 and requested to restore the main Reference. The Labour Court did not accept the reason given by the petitoner for not representing its case at the time when the Reference was made and therefore by order

dated 25.2.2005 dismissed the application. Being aggrieved and dissatisfied with the order dated 25.2.2005 passed by the Labour Court in the aforesaid application, the petitoner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Jal Unwala, appearing for Shri JB Pardiwala, learned advocate representing the petitoner has submitted that the petitioner being a Public Body and considerign the merits of the case the Labour Court by a lenient view ought to have restored the main Reference by quashing and setting aside the ex-parte award and given one additional chance to the petitioner so that the petitioner can contest the main Reference on merits and therefore it is requested to allow the present Special Civil Application.

5. Shri Mukesh H. Rathod, learned advocate appearing on behalf of the respondent has opposed the present Special Civil Application and has submitted that no sufficient cause was shown by the petitioner for not remaining present at the time when the Reference was heard and therefore the Labour Court was justified in not restoring the Reference. It is therefore requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is true, that nobody remained present on behalf of the petitoner at the time when the Reference was heard. However, it was also required to be considered that the petitioner being a Public Body considering the cause shown by the petitioner for not remaining present the Labour Court, Valsad ought to have explored the possibility of imposing some costs while quashing and setting aside the ex-parte award, and ought to have restored the main Reference after affording one additional chance to the petitioner to contest the Reference on merits. The said fact is not considered by the Labour Court and it appears that the Labour Court has lost sight of it. Normally, a case is to be decided on merits after giving opportunity to all the concerned parties and an application should not be dismissed on technicalities.

7. Under the circumstances, the impugned order passed by the Labour Court dated 25.2.2005 in Misc. Application No. 18/2004 and the ex-parte judgment and award dated 3.12.2003 passed by the Labour Court in Reference (LCV) No. 5 of 2000 are required to be quashed and set aside and the same are quashed and set aside. The Reference (LCV) No. 5 of 2000 is restored to file on condition that over and above the amount of Rs. 5000/= which is already deposited by the petitioner pursuant to the order passed by this Court dated 24.6.2005, the petitoner is directed to

pay a further sum of Rs. 7,500 towards the costs. The petitoner is permitted to withdraw the sum of Rs. 5000 already deposited by the petitoner. The Office is directed to draw a cheque in the name of the respondent workman for the aforesaid amount within the period of three weeks from today and hand over the same to the learned advocate appearing on behalf of the respondent. The balance amount of Rs. 7,500 to be paid by the petitioner within the period of four weeks from today. On payment of the said amount and on production of the Receipt to that effect the Labour Court, Valsad is directed to decide and dispose of the Reference No. 5/2000 as early as possible within the period of 6 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R. Shah, J.]

RMR.